

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 13-10200-GAO
	)	
	)	
DZHOKHAR A. TSARNAEV	)	

**GOVERNMENT’S MOTION TO DISCLOSE TO THE DEFENSE  
SPECIFIC DOCUMENTS AND TRANSCRIPTS PREVIOUSLY FILED *EX PARTE***

The United States hereby moves this Court for an order authorizing it to disclose to the defense specific pleadings and transcripts that were filed *ex parte* in this Court. All of these materials are currently under seal and will remain under seal in the event the Court authorizes their disclosure to the defense.

In support of this motion, the government states as follows:

1. During the pretrial, trial, and sentencing proceedings in this matter, the government filed a small number of documents *ex parte* with the Court’s permission. In addition, on a few occasions, government counsel addressed the Court *ex parte* about confidential matters. *See generally United States v. Innamorati*, 996 F.2d 456, 487 (1st Cir. 1993) (“[I]n rare situations requirements of confidentiality outweigh the interest in adversarial litigation and permit a court to rule on an issue *in camera* without the participation of an interested party.”).

2. Defendant has appealed from his convictions and sentence, *see United States v. Dzhokhar A. Tsarnaev*, 1st Cir. No. 6001, and the parties are currently assembling a complete

record for purposes of that appeal. As part of that process, defense counsel has asked the government for access to any government *ex parte* filings and transcripts in this Court.

3. Undersigned counsel has reviewed government *ex parte* pleadings and transcripts to determine which materials may now be disclosed to the defense. Based on that review, the government requests that particular sealed materials identified in the sealed and *ex parte* attachment to this motion be provided to the defense for its use in connection with the appeal. *See United States v. Perkins*, 926 F.2d 1271, 1274 (1st Cir. 1991) (“During the pendency of this appeal, on the prosecution’s motion, the district court unsealed a submission from the government that had previously been presented to it *in camera*[.]”). If these materials are disclosed to the defense, the parties will then confer about whether any of them should also be unsealed.

4. Although this case is currently on appeal, this Court may act on the government’s motion because doing so will advance the pending appeal and thus will aid in the appellate court’s exercise of its own jurisdiction. *See* C.A. Wright, A.R. Miller, E.H. Cooper & C.T. Struve, 16A Federal Practice and Procedure, § 3949.1 at 57 (2008) (“Even as to matters encompassed within the scope of the pending appeal, the district court may act in aid of the court of appeals’ exercise of its jurisdiction.”).

For the foregoing reasons, the United States respectfully requests that this Court authorize it to disclose to the defense each of the sealed documents and transcripts contained in the sealed and *ex parte* attachment to this motion. In addition, defendant has asked the government to identify certain information about *ex parte* filings or proceedings not covered by this motion, namely, “the date of each [event], a summary description, the length of the filing or

number of transcript pages, how many exhibits were included, and the reason why [the government] believe[s] disclosure is not appropriate.” Although the parties do not agree regarding that request, the government nonetheless asks that the Court order that parties may disclose such information in the future to each other in connection with any materials that remain ex parte.

The government has communicated with Counsel for Defendant-Appellant, who assents to the motion.

Respectfully submitted,

WILLIAM D. WEINREB  
Acting United States Attorney

By: /s/ Alope Chakravarty  
Alope S. Chakravarty  
Assistant U.S. Attorney

Date: January 31, 2017

CERTIFICATE OF SERVICE

I hereby certify that this document, which I have discussed with counsel, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Alope Chakravarty  
Alope S. Chakravarty  
Assistant U.S. Attorney